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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Market Entry and Regulation
of International Common Carriers
With Foreign Carrier Affiliations

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RM-8355

REPLY COMMENTS OF THE COALITION OF
INTERNATIONAL TELECOMMUNICATIONS USERS

The Coalition of International Telecommunications Users (the "Coalition") hereby submits the following reply to the comments that were submitted in response to the petition for rulemaking filed by American Telephone and Telegraph Company ("AT&T") on September 22, 1993.¹

I. INTRODUCTION

The Coalition is an informal group of high volume users of international telecommunications services. The Coalition was formed to serve as a vehicle for international telecommunications users to come together from time to time to address and publicly comment on important legislative and regulatory matters affecting the use, interconnection and pricing of international telecommunications services and facilities. The individual companies participating in the Coalition through this reply are among the largest users of telecommunications services in the world.

In its petition, AT&T has asked the Commission to initiate a rulemaking proceeding to undertake a sweeping review of the Commission's market entry and

^{1/} See Petition for Rulemaking of American Telephone and Telegraph Co., RM-8355 (filed Sep. 22, 1993) [hereinafter "AT&T Petition"].

regulatory policies governing foreign carriers and U.S. carriers with foreign carrier affiliations. Specifically, AT&T has proposed that the Commission impose a number of conditions on the entry into the U.S. market of new foreign carriers, on the expansion of the operations of foreign carriers currently operating in the United States, and on the "affiliation"² of U.S. carriers with foreign carriers. In addition, AT&T has proposed that the Commission adopt rules prohibiting foreign carrier entry or expansion into the United States unless the Commission finds that "comparable opportunities for U.S. carriers to compete in the home markets of the prospective entrants presently are available or will be available within a reasonable period not to exceed two years."³

The Coalition has decided to participate in this proceeding in order to provide the Commission with a user perspective on the issues raised by AT&T's petition. As an association of users, the Coalition has an interest in promoting the widespread availability of new, innovative and reasonably priced telecommunications services. Unfortunately, the regressive policies proposed by AT&T would result in fewer international telecommunications service offerings at higher prices and would inhibit the introduction of new services. In addition, AT&T's proposal would subject current user network arrangements -- which serve as the lifeblood of U.S. companies operating on an international basis -- to open-ended and disruptive inquiries. Indeed, the initial comments -- filed almost entirely by carriers -- demonstrate that AT&T's proposed rules would also be bad for carriers.⁴

^{2/} See AT&T Petition at 5-7. Under AT&T's proposal, U.S. carriers would be considered an affiliate of a foreign carrier if the foreign carrier owns more than a five percent equity interest in the U.S. carrier. *Id.* at 7 n.2.

^{3/} *Id.* at 7.

^{4/} It should therefore not be surprising that only one carrier, Sprint Communications Company L.P., supported AT&T's proposal. See Comments of Sprint Communications L.P., RM-8355 (filed Nov. 1, 1993). MCI Telecommunications Corporation ("MCI") opposes AT&T's petition, but proposes a comprehensive inquiry into such matters as: "the changing nature of customer
(Footnote 4 continued on next page)

There is thus very little to commend AT&T's petition. For U.S. end users, AT&T's proposal would impede their ability to obtain service and conduct their affairs on an international basis. For U.S. carriers, AT&T's proposal would discourage alliances with foreign carriers and deter competition in the international telecommunications marketplace.⁵ AT&T's proposed rules would similarly have a negative impact on the U.S. Government's ongoing efforts to achieve further telecommunications liberalization in selected foreign countries. Given these very serious negative consequences, and AT&T's failure to advance any sound reasons why the Commission should reexamine its current policies -- which demonstrably serve the public interest -- AT&T's petition should be denied.

II. THE RULES PROPOSED BY AT&T WOULD RESTRICT USER CHOICE AND THEREBY IMPEDE THE ABILITY OF U.S. COMPANIES TO OPERATE ON AN INTERNATIONAL BASIS.

In its petition, AT&T has urged the Commission to initiate a rulemaking proceeding "to deal with the problem of asymmetric regulation and market entry policies in the global services market."⁶ In support of its request, AT&T claims the Commission's current case-by-case approach has become obsolete in light of the "pace at which the global services business is changing, and the myriad ways in which foreign carriers are seeking entry" into the United States.⁷

(Footnote 4 continued from previous page)

demand for international telecommunications services; the importance of U.S. carriers associating with foreign carriers through a variety of relationships in order to satisfy that demand; whether the regulatory policies governing AT&T should be strengthened; and the Commission's experience in persuading foreign administrations to reduce their accounting rates. . . ." Comments of MCI Telecommunications Corporation, RM-8355, at 4 (filed Nov. 1, 1993) [hereinafter "MCI Comments"].

^{5/} See MCI Comments at i-iv; Comments of ACC Global Corp., RM-8355, at 1-2 (filed Nov. 1, 1993) [hereinafter "ACC Global Comments"].

^{6/} AT&T Petition at i.

^{7/} Id.

Nearly all of the commenters, however, have made clear that AT&T's proposal would only serve to shield AT&T from competition and deprive users of the benefits of competition. AT&T, for example, has proposed a number of conditions whose purported purpose is to prevent foreign carriers from leveraging their overseas market power to the disadvantage of U.S. carriers. But, as MCI Telecommunications Corporation ("MCI") has correctly pointed out, "those conditions would effectively preclude U.S. carriers -- affiliated in virtually any way with foreign carriers -- from offering the kind of seamless, sophisticated international telecommunications services that customers demand."⁸

Likewise, the restrictive "comparability" standard proposed by AT&T -- intended to open foreign markets -- would effectively close the U.S. market to foreign carriers already doing business in the United States, as well as preclude future arrangements between U.S. and foreign carriers involving the provision of international services. AT&T's proposed "comparability" standard would bar foreign participation in U.S. markets -- no matter how much U.S. users benefit from such participation -- because it could only be satisfied in the highly unlikely event that a foreign regulatory regime mirrored the Commission's regulatory policies.

Of particular concern to the Coalition are the ramifications of AT&T's proposed "comparability" standard on the Commission's current international private line resale policies. Only recently, the Commission adopted an "equivalency" standard to be used in determining whether to allow the resale of international private lines connected to the public switched network.⁹ If adopted, AT&T's rigid standard would undo this newly adopted rule and presumably erase the Commission's equivalency

^{8/} MCI Comments at 2 (emphasis added).

^{9/} See Regulation of International Accounting Rates, 7 FCC Rcd 7927 (1992).

finding with respect to Canada, thereby disrupting existing networks and depriving users of alternative sources of supply.¹⁰

If the Commission were to initiate the rulemaking requested by AT&T -- let alone adopt the rules that AT&T has proposed -- U.S. users would be adversely affected. Planning would come to a standstill, as uncertainty clouded the future of user networks. And if the Commission were to adopt the rules proposed by AT&T, users would face the prospect of network disruptions as the Commission began the task of reviewing existing arrangements involving foreign carriers and U.S. carriers with foreign carrier affiliations. Even worse, such global networks -- which have been built carefully over time -- could be subject to the Commission's denial of authority, thereby requiring users to undo existing arrangements upon which they rely.

In short, AT&T's proposal would reduce the international telecommunications options available to users and inhibit the introduction of new and innovative service offerings. A grant of AT&T's petition would therefore impede the ability of U.S. companies to operate on a worldwide basis and thus make them less effective competitors in today's increasingly global marketplace.

III. AT&T'S PROPOSAL WOULD LIKELY ENCOURAGE FURTHER RESTRICTIVENESS, RATHER THAN LIBERALIZATION, IN FOREIGN COUNTRIES.

Although the Coalition shares AT&T's concerns about the restrictive policies of many foreign regulatory regimes, the rules proposed by AT&T would harm, rather than help, users. As ACC Global Corp. ("ACC Global") points out in its comments, AT&T's heavy-handed approach to opening foreign markets could "prejudice the development of . . . international cooperation at the very time when

^{10/} See Opposition of EMI Communications Corporation, RM-8355, at 2-4 (filed Nov. 1, 1993).

many foreign regulators are on the brink of adopting more competitive market policies."¹¹ Such an approach would also discourage foreign carriers which have more flexibility from liberalizing beyond what is required by national law.

Notwithstanding AT&T's rhetoric to the contrary, its proposal is unlikely to open foreign markets. Indeed, restricting the operations of foreign carriers in the U.S. marketplace is likely to result in further restrictions in foreign markets. Because basic communications services are already restricted to a significant degree, the services likely to be targeted for retaliatory measures are those that have already been liberalized, such as value-added networks. Since many users depend upon value-added networks, they -- and not AT&T -- are the parties most likely to be harmed by such retaliatory actions.

A better approach would be for the United States to encourage further liberalization in foreign markets through bilateral and multilateral negotiations. There is legitimate reason to believe that many countries are ready to begin the liberalization now being advocated by the United States. If the Commission were to adopt AT&T's proposal, the United States would be perceived as having turned its back on liberalization.¹² U.S. negotiators would lose credibility, and their ability to seek further telecommunications liberalization would be compromised. Thus, rather than

^{11/} See ACC Global Comments at 5.

^{12/} The British Embassy, for example, has emphasized its concerns that AT&T's proposals are regressive. In particular, the Embassy notes that

[t]he proposition that a 5% holding in a U.S. carrier by a foreign entity should lead to the U.S. company being defined an 'affiliate' is more stringent than that contained in the 1985 FCC decision that a 15% holding by a foreign company lead to dominant treatment. . . . It also seems to us an unrealistic assessment of the point at which there is an incentive for discrimination.

Letter from J.M. Hammond, British Embassy, to William F. Caton, RM-8355, at 2 (filed Nov. 1, 1993).

restricting the activities of foreign carriers, the United States should promote liberalization by encouraging the widest possible provision and use of international telecommunications services.

IV. AT&T HAS NOT IDENTIFIED ANY SOUND PUBLIC POLICY REASONS WHY THE COMMISSION SHOULD REEXAMINE ITS EXISTING MARKET ENTRY AND REGULATORY POLICIES REGARDING FOREIGN CARRIERS AND U.S. CARRIERS WITH FOREIGN CARRIER AFFILIATIONS.

In addition to being regressive and restrictive, AT&T's proposal is wholly unjustified. AT&T has failed to demonstrate that the Commission's current rules are ineffective or disserve the public interest. As MCI and ACC Global have persuasively argued, AT&T certainly has not advanced any reasons that would justify the extraordinary change in the status quo which it has requested, i.e., restricting or terminating the operations of foreign carriers and U.S. carriers with foreign carrier affiliations.¹³

Under the agency's current rules, the Commission has the flexibility to examine the facts and circumstances surrounding the operations of individual carriers. For example, in evaluating applications to resell international private lines or to obtain cable landing licenses, the Commission examines the "equivalency" or "reciprocity," respectively, in the home country of the applicant. This approach permits the Commission to consider the relevant foreign regulatory regimes in a way which recognizes the inherent uniqueness of each country. The Commission is then free to craft the appropriate individualized terms and conditions necessary to protect the public interest. The current rules thus afford the Commission the flexibility to deal with the complexities of the ever-changing international telecommunications marketplace.

^{13/} See MCI Comments at 11-21; ACC Global Comments at 2-3.

The Commission's rules have also proven to be effective. Largely because of the Commission's flexibility under its existing rules, none of the abusive leveraging which AT&T fears is today apparent in the U.S. marketplace. And AT&T has presented no evidence to suggest that the Commission's rules are ill-suited or incapable of dealing with any current or future set of facts or circumstances.¹⁴ By contrast, the "one-size-fits-all" approach espoused by AT&T is totally unrealistic. Plainly, such an approach would be incapable of effectively dealing with a dynamic marketplace, ever-changing technology, and dramatic differences in foreign regulatory regimes. Indeed, such a rigid regulatory approach would limit the Commission's flexibility to adapt its policies, as it has in the past, to protect the public interest.

The Commission should therefore retain its current approach to the regulation of foreign carriers and U.S. carriers with foreign carrier affiliations and deny AT&T's petition.

^{14/} Moreover, as MCI has correctly pointed out, aggrieved parties can seek redress for violations of the Commission's policies or the Communications Act even after the Commission has granted an application by filing a formal complaint pursuant to Section 208 of the Act or by asking the Commission to initiate an investigation pursuant to Sections 204 and 218 of the Act. See MCI Comments at 21-22.

V. CONCLUSION

For all of the reasons set forth above, the Coalition urges the Commission to deny AT&T's petition for rulemaking.

Respectfully submitted,

**THE COALITION OF INTERNATIONAL
TELECOMMUNICATIONS USERS**

CITICORP

P. Michael Nugent
425 Park Avenue
Room 2265
New York, New York 10043
(202) 559-0142

EDS CORPORATION

John B. Lynn
1331 Pennsylvania Avenue, N.W.
Suite 1300 -- North Tower
Washington, D.C. 20004
(202) 637-6700

GE INFORMATION SERVICES

Bruce E. Hunter
401 Washington Street
Rockville, MD 20850
(301) 340-5342

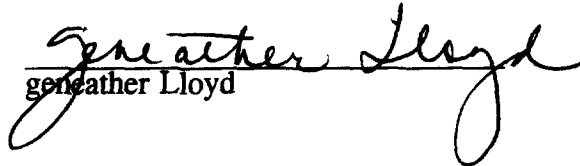
**INTERNATIONAL BUSINESS MACHINES
CORPORATION**

Sheila J. McCartney
208 Harbor Dr.
Stamford, CT 06904
(203) 973-7971

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CERTIFICATE OF SERVICE

I, geneather Lloyd, hereby certify that copies of the foregoing Reply Comments of the Coalition of International Telecommunications Users in RM-8355, were served by hand or by First-Class United States mail, postage prepaid, upon the parties appearing on the attached service list, this 16th day of November, 1993.


geneather Lloyd

Andrew D. Lipman
Helen E. Disenhaus
Swidler & Berlin
3000 K Street, N.W.
Suite 400
Washington, D.C. 20007-5116

Philip L. Verveer
Sue D. Blumenfeld
Melissa E. Newman
Willkie, Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036

David R. Poe
Cherie R. Kiser
Le Boeuf, Lamb, Leiby & MacRae
1875 Connecticut Avenue, N.W.
Washington, D.C. 20009-5728

Paul R. Rodriguez
Stephen D. Baruch
David S. Keir
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006

Colin R. Green
The Solicitor and Chief
Legal Advisor
Group Legal Services
British Telecommunications plc
81 Newgate Street
London EC1A 7AJ England
United Kingdom

Albert Halprin
Halprin, Temple & Goodman
1301 K Street, N.W.
Suite 1020, East Tower
Washington, D.C. 20005

Leon M. Kestenbaum
Phyllis A. Whitten
1850 M Street, N.W.
11th Floor
Washington, D.C. 20036

Judith A. Maynes
Daniel Stark
Elaine R. McHale
American Telephone & Telegraph
295 N. Maple Avenue
Room 3236B2
Basking Ridge, NJ 07920

John M. Scorce
Jodi L. Cooper
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

James L. McHugh, Jr.
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Judith D. O'Neill
Gregory S. Slater
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Jennifer Warren
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 530
Washington, D.C. 20554

J.M. Hammond
First Secretary
British Embassy
3100 Massachusetts Avenue, N.W.
Washington, D.C. 20008-3600

Kathleen Levitz
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

George S. Li
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 530
Washington, D.C. 20554

Wendell R. Harris
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 534
Washington, D.C. 20554

Joan M. Griffin
BT North America Inc.
601 Pennsylvania Ave., N.W.
North Building, Suite 725
Washington, D.C. 20004

Copy Contractor
1919 M Street, N.W.
Room 246
Washington, D.C. 20554